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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/784,616

02/23/2004

David Morrow

STR 0109 PUS

8378

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7590

05/28/2004

ARTZ & ARTZ, P.C.  
28333 TELEGRAPH RD.  
SUITE 250  
SOUTHFIELD, MI 48034

EXAMINER

LINDSEY, RODNEY M

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/784,616	MORROW ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Rodney M. Lindsey	3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Priority***

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

This application is claiming the benefit of a prior filed nonprovisional application under 35 U.S.C. 120, 121, or 365(c). Copendency between the current application and the prior application is required.

### ***Specification***

2. The disclosure is objected to because of the following informalities: Serial No. 10/232023 is improperly referenced as a continuation.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 26, lines 3 and 4 “said shell portion” has no antecedent basis.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 15-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Kasper.

With respect to claims 15, 19, 21, 23 and 26 note Figures 9-11 and hard shell portion at 72, lining at 86, chin strap as at 100, facemask portion 74, mouthpiece 94 and openings like 34 as shown in Figure 3. With respect to claim 19 note the visor per Figure 10 forming the forward portion of the shell and overhanging the facemask 74 and the vent openings in the mouthpiece 94 inherent in the grill construction of the mouthpiece 94. With respect to claims 16 and 20 note that 94 is located on a bottom portion of 74. With respect to claim 17 note such configuration of the openings 34. With respect to claim 18 note the diagonal extent of the openings 34 as shown in Figure 3. With respect to claim 22 note the diagonal arrangement of the grid openings as shown in Figure 10. With respect to claim 23 note that the chin strap is as releaseably engageable as claimed and note the diagonal arrangement of the grid openings of mouthpiece 94 as shown in Figure 10. With respect to claim 24 note that the mouthpiece 94 may be formed integral with the facemask 74 (see column 8, line 4) and therefore of hard plastic material as claimed. With respect to claim 25 note the front portion of the mouthpiece 94 with the diagonal openings as shown in Figure 10. With respect to claims 26-28 note the ear openings on the side 82 as shown in Figure 10.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kasper in view of Marietta et al.

Kasper shows a shell portion as at 72, a facemask as at 74, a chin strap releasably engageable as claimed with the shell portion, ear holes as at side 82 and a lining as at 86. Kasper does not teach the lining releasably engageable to achieve a better fit as claimed. Marietta et al. teach old the use of releasably engageable liners as at 6 to achieve a better fit. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the liners of Marietta et al. for those of Kasper to achieve the advantage of establishing removable liners for affording a better fit of the helmet. With respect to claim 30 note the crown location of the liner 86 as taught by Kasper. With respect to claim 31 note the use of hook and loop attachments by Marietta et al. (see column 7, line 7).

9. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kasper in view of Marietta et al. as applied to claim 29 above, and further in view of Christensen. Kasper does not teach the lining having a portion wrapped around the lower edge of the shell portion.

Christensen teaches old in the art the use of a lining portion 26 at the lower edge of the shell for protecting the wearer's neck and inherently capable of wrapping around the lower edge. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the lining of Kasper the portion 26 of Christensen to achieve the advantage of protecting the neck of the wearer of the helmet.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the similar helmet and facemask arrangements of Jurga et al.,

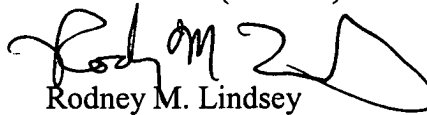
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Pernicka et al., Harris, O'Bradaigh et al., Primeau, Wolfe, Neeld et al., Clement and Copeland et al., the linings of Dallas et al., O'Connor, Timms et al. and Lewicki and the face/ear openings of Hudner, Jr. et al., White, British patent to Smith and Mattsson.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (703) 305-7818. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

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